

J. MICHAEL KALER, SBN 158296
KALER LAW OFFICES
9930 Mesa Rim Road, Suite 200
San Diego, California 92121
Telephone (858) 362-3151
Email: michael@kalerlaw.com

MELODY A. KRAMER, SBN 169984
KRAMER LAW OFFICE
9930 Mesa Rim Road, Suite 1600
San Diego, California 92121
Telephone (858) 362-3150

Attorneys for Plaintiff JENS ERIK SORENSEN,
as Trustee of SORENSEN RESEARCH AND
DEVELOPMENT TRUST

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JENS ERIK SORENSEN, as Trustee of
SORENSEN RESEARCH AND
DEVELOPMENT TRUST,

Plaintiff

v.

LEXAR MEDIA, INC., a Delaware
corporation; and DOES 1 – 100,

Defendants.

and related counterclaims.

) Case No. C08-00095 JW
)
) **NOTICE OF UNAVAILABLE**
) **WITNESS PROMPTING FILING OF**
) **AMENDED MOTION FOR**
) **APPLICATION OF 35 U.S.C. § 295**
) **PRESUMPTION OF**
) **INFRINGEMENT**
)
) Date: June 30, 2008
) Time: 9:00 A.M.
) Courtroom 8, 4th Floor
) Judge: The Hon. James Ware

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD

2
3 PLEASE TAKE NOTICE that on May 12, 2008, Paul Brown, an expert
4 witness whose declaration was submitted on April 11, 2008 in partial support of
5 Plaintiff's motion for application of 35 U.S.C. § 295 presumption of infringement
6 (Docket #20) developed health problems requiring hospitalization and materially
7 interfering with his ability to continue to act as an expert witness in this case.

8
9 As a consequence of Mr. Brown's unavailability, Plaintiff has retained another
10 technical expert witness for this case and for purposes of the pending 35 U.S.C. §
11 295 motion. On May 20, 2008 Plaintiff filed a new expert declaration and an
12 Amended Motion for Application of 35 U.S.C. § 295 Presumption of Infringement
13 (Docket #31).

14
15 The Amended Motion does not rely upon any testimony by Mr. Brown, but
16 rather upon the expert testimony of Dr. Stephen Petrie, whose new expert declaration
17 was also filed.

18
19 The Amended Motion was filed a full 40 days prior to the June 30, 2008
20 hearing date set by the Court to ensure compliance with Local Rule 7-2. The
21 Amended Motion is identical to the original motion with the single exception that all
22 the references to expert testimony are citations to the Declaration of Dr. Petrie rather
23 than to Mr. Brown.

24
25 This Notice is being filed in conformity with the request of Defendant Lexar's
26 counsel as shown in the letter from attorney Joseph Lee, dated May 20, 2008, a true
27 and correct copy of which is attached hereto as Exhibit A.

1 Even though Defendant Lexar has not noticed any depositions in this case to
2 date, Plaintiff is prepared to make Dr. Petrie available for deposition on an
3 expedited basis if Defendant desires to depose him prior to Defendant's opposition
4 due date. Because Defendant will have a full opportunity to depose the expert
5 witness prior to the date its opposition papers are due, there is no need for any delay
6 of the hearing of the Amended motion.

7
8 Dated this Wednesday, May 21, 2008.

9 Respectfully submitted,

10
11 JENS ERIK SORENSEN, as Trustee of SORENSEN
12 RESEARCH AND DEVELOPMENT TRUST,
Plaintiff

13 /s/ J. Michael Kaler

14 J. Michael Kaler
15 Melody A. Kramer
Attorneys for Plaintiff

PROOF OF SERVICE

I, J. Michael Kaler, declare: I am and was at the time of this service working within in the County of San Diego, California. I am over the age of 18 year and not a party to the within action. My business address is the Kaler Law Offices, 9930 Mesa Rim Road, Suite 200, San Diego, California, 92121.

On Wednesday, May 21, 2008, I served the following documents:

**NOTICE OF UNAVAILABLE WITNESS PROMPTING FILING OF AMENDED MOTION
FOR APPLICATION OF 35 U.S.C. § 295 PRESUMPTION OF INFRINGEMENT**

PERSON(S) SERVED	PARTY(IES) SERVED	METHOD OF SERVICE
Jared Bobrow jared.bobrow@weil.com Weil, Gotshal & Manges LLP 201 Redwood Shores Parkway Redwood Shores, CA 94065	Lexar Media, Inc.	Email--Pleadings Filed with the Court via CM/ECF

- ☐ (Personal Service) I caused to be personally served in a sealed envelope hand-delivered to the office of counsel during regular business hours.
- ☐ (Federal Express) I deposited or caused to be deposited today with Federal Express in a sealed envelope containing a true copy of the foregoing documents with fees fully prepaid addressed to the above noted addressee for overnight delivery.
- ☐ (Facsimile) I caused a true copy of the foregoing documents to be transmitted by facsimile machine to the above noted addressees. The facsimile transmissions were reported as complete and without error.
- ☐ (Email) I emailed a true copy of the foregoing documents to an email address represented to be the correct email address for the above noted addressee.
- ☒ (Email--Pleadings Filed with the Court) Pursuant to Local Rules, I electronically filed this document via the CM/ECF system for the United States District Court for the Southern District of California.
- ☐ (U.S. Mail) I mailed a true copy of the foregoing documents to a mail address represented to be the correct mail address for the above noted addressee.

I declare that the foregoing is true and correct, and that this declaration was executed on

1 Wednesday, May 21, 2008, in San Diego, California.

2
3 /s/ J. Michael Kaler

4

J. Michael Kaler

Exhibit A